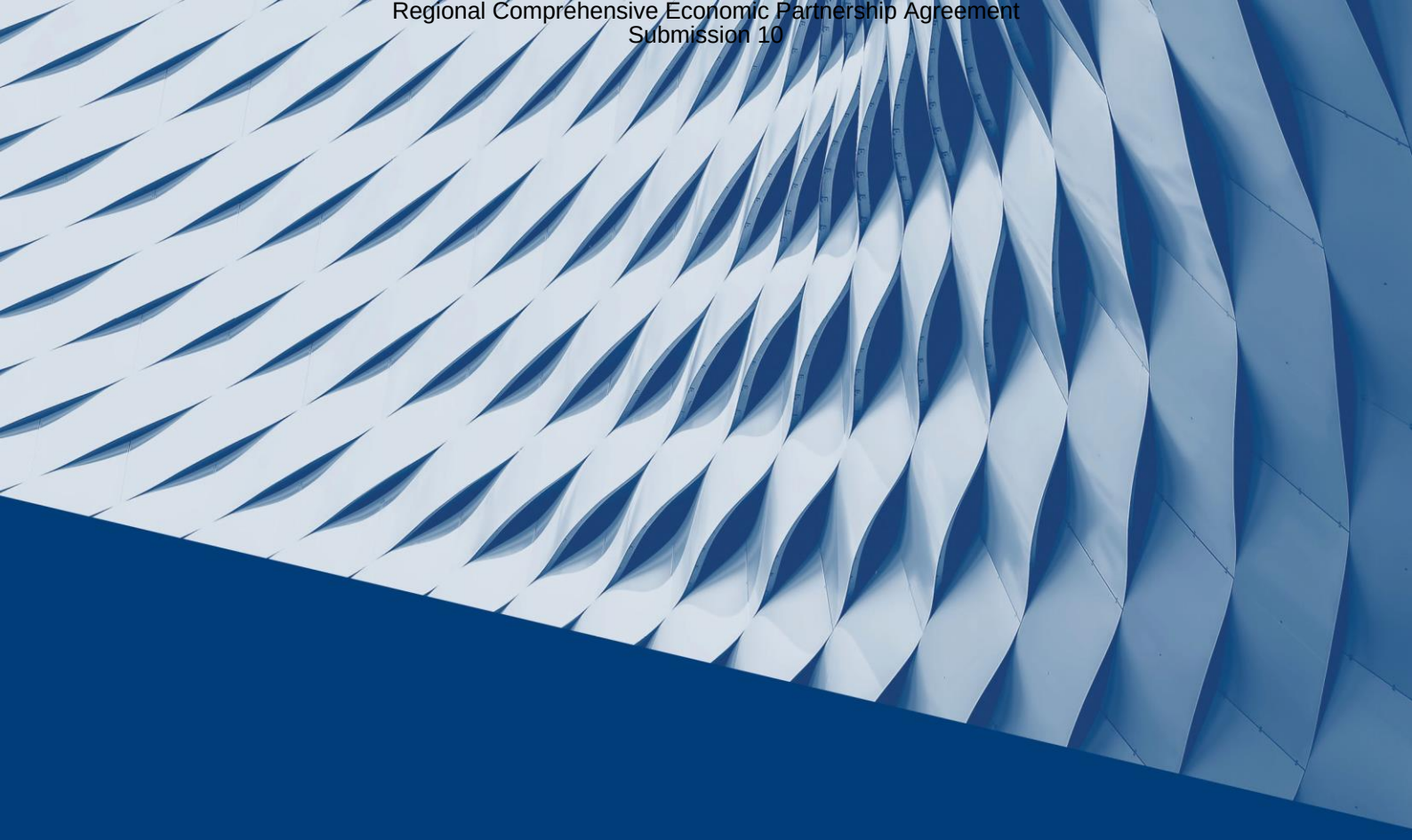

# Regional Comprehensive Economic Partnership Agreement

ACTU Submission to the Inquiry on the Regional Comprehensive Economic Partnership Agreement (RCEP)

ACTU Submission, 21 April 2021
ACTU D. No 17/2021

ACTU
australian council of trade unions

# Contents

# Introduction

The ACTU welcomes the opportunity to make a submission to this inquiry into the Regional Comprehensive Economic Partnership Agreement (RCEP).

The ACTU is the peak body for Australian unions. The ACTU and affiliated unions have had a long and significant interest in the trade agenda on behalf of our members and workers generally.

The RCEP is a major undertaking with profound implications for the economies and societies concerned. The giant Regional Comprehensive Economic Partnership between Australia, China, Japan, South Korea, New Zealand and the ten members of ASEAN (Brunei, Cambodia, Indonesia, Laos, Myanmar, The Philippines, Singapore, Thailand and Vietnam) was signed on November 15. The deal will cover one third of the world's population and economy. Yet, as appears to be the way with all trade agreements Australia is involved in, the RCEP has been negotiated and entered into with very little public scrutiny.

We should expect that trade agreements are subject to proper scrutiny and that unions and others in civil society, as well as business, have the opportunity for genuine input into the negotiations on behalf of those they represent. To date trade agreement negotiations have been conducted behind closed doors and Australia lags behind other countries and institutions when it comes to public scrutiny. This whole process in Australia contrasts with the experience in the European Union, for example. The EU has recognised legitimate community demand for the negotiating papers and final text to be exposed to public debate.

Unions have concerns with a number of elements of the RCEP but in this submission we will focus on key problems.

- Alarmingly, as the right to regulate the aged care sector is not expressly reserved in RCEP, ratification could mean that the Australian Government loses the ability to regulate aspects of the aged care sector. The agreement should not prevent the re-regulation of essential Services. The Government needs to list aged care in reservations excluded from obligations in the Services Chapter.
- The Royal Commission into Aged Care Quality and Safety has exposed a system in crisis and has recommended increases in staffing numbers, increases in qualifications of staff and changes to requirements for quality of care and licensing arrangements. These are all areas of regulation restricted in the RCEP clauses. Since aged care has not been reserved, RCEP rules could prevent new regulation in these areas.

- The Australian Government should not be signing a preferential trade deal with Myanmar while the military junta is in power. The military coup on 1 February 2021 suspended civilian government and effectively returned full power to the military, and the situation is getting worse by the day. The military is escalating its repression of the mass Civil Disobedience Movement (CDM). Workers and trade unions are at the forefront of the CDM, and are being violently suppressed by the military junta for participating in peaceful protests and strikes. Trade unionists have been arrested, intimidated, threatened and charged for participating in protests and strike actions; union leaders are on a military wanted list and are now in hiding; sixteen unions and workers' rights organisations have been declared illegal by the military regime; and workers have been terminated or had wages withheld for participating in strikes and protests, and many are now struggling to feed their families.
- Instead of entering into a preferential trade deal with Myanmar, the Australian Government should be implementing trade sanctions and cutting off all support to the military junta. If the Australian Government signs an RCEP that includes Myanmar, it risks legitimising the regime. Instead, the Morrison Government needs to follow the lead of the Biden administration, who announced on 29 March the immediate suspension of all US engagement with Myanmar under the 2013 Trade and Investment Framework Agreement (TIFA)[1].
- The Australian Government should be using trade agreements to improve working conditions and address issues of labour exploitation, including forced labour and child labour. RCEP contains no protections for workers' rights or human rights: there is no reference to international labour standards or human rights standards, and no labour chapter.
- The RCEP agreement entrenches the removal of labour market testing for all RCEP countries.
- The inclusion of increased number of temporary workers who are vulnerable to exploitation.
- The potential re-inclusion of Investor-State Dispute Settlement provisions. ISDS could be reinserted two years after ratification if parties agree.
- The lack of transparency and accountability in negotiations.
- There is no empirical evidence of significant economic benefits from the agreement.

[1] https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/march/ustr-suspends-trade-engagement-burma-following-military-coup-and-violence-against-civilians

- No independent economic, social and health impact assessment.

This is not an exhaustive list. We share the concerns expressed about the impact of the RCEP in a range of other areas.

We endorse and refer the inquiry to the submissions of our affiliated unions, as well as AFTINET, for further treatment of these and other matters.

## Background

Australian unions are not anti-trade. We support and recognise the value of increased exports and greater access to overseas markets for Australian businesses. We welcome the opportunities for workers that come from participating in the 21st century global economy. The ACTU is a supporter of trade as a vehicle for economic growth, job creation, tackling inequality and rising living standards. Having a strong export sector is imperative for Australia's prosperity.

We can believe in all these benefits of trade agreements, and at the same time have a rock-solid commitment to ensuring that other provisions of trade agreements do not jeopardise Australian jobs, undermine working conditions or compromise the ability of current and future Australian governments to exercise their sovereign rights to regulate in the public interest.

We should also expect that trade agreements are subject to proper scrutiny and that citizens and their representative bodies such as unions and others in civil society, as well as business, have the opportunity for genuine input into the negotiations on behalf of those they represent.

Unions should not be expected to be 'cheerleaders' for a trade agenda that does not deliver for Australian workers or the broader community. Where proposed free trade agreements, or provisions of those agreements, are not in the national interest and the interests of our members and workers generally, we will make the case for change. Parliament also should not simply be a rubber-stamp for agreements already entered into and negotiated by the executive arm of Government. Unions are only in favour of trade agreements if there are overall benefits for all Australians.

Too often in our experience, the overall benefits of trade agreements are over-sold by governments and the downsides are dismissed.

For example, the Productivity Commission has found that predicted economic benefits from bilateral and regional agreements are often exaggerated and the actual economic benefits are likely to be modest, while such preferential trading arrangements 'add to the cost and complexity

of international trade… with an emerging and growing potential for trade preferences to impose net costs on the community.[2]'

## Provisions on Temporary workers

Free trade agreements that deal with the movement of temporary overseas workers into Australia are critical issues for Australian unions and our members. Quite simply, this is because the fundamental issues at stake are about support for Australian jobs, support for Australian training opportunities, and support for fair treatment and decent wages and conditions for all workers.

The RCEP commits to arrangements on "Intra Corporate Transferee' (ICT) and Contractual Service Supplier" (CSS) and independent executives. These workers would enter under the Temporary Skill Shortage visa which covers over 400 skilled occupations.

The occupations include nurses, engineers, electricians, plumbers, carpenters, bricklayers, tilers, mechanics and chefs. We are concerned there has been no independent analysis on the potential effects on the labour market and Australian workers.

We accept there is a role for some level of temporary migration where critical short-term skill shortages are proven to exist, provided there is a proper, rigorous process for determining areas of genuine need and managing the process. But the priority must always be on maximising jobs and training opportunities for Australians – that is, citizens and permanent residents, regardless of their background or country of origin. Whether it is young people looking for their first job or older people looking to get back into the workforce or change careers, they deserve an assurance that they will have first access to Australian jobs. This is more important than ever at a time when unemployment and underemployment remains high, youth unemployment is in double digits and some regional youth unemployment levels are above 25%.

Australian Unions have a long-standing view that the migration system should preference permanent, rather than temporary migration in Australia. We believe the current trend towards temporary employer-sponsored migration is effectively outsourcing decisions about our national migration intake to employers and their short-term needs, over the national interest and a long-term vision for Australia's economy and society. This shift should not be blindly accepted as some inevitable, inexorable trend that must continue. Instead, it should be subject to critical questioning

[2] Productivity Commission Research Report '*Bilateral and Regional Trade Agreements*', 2010

and debate. Unions continue to have concerns with a skilled migration program that relies excessively on temporary employer-sponsored migration, as is the case with the current system.

Australia has an underclass of exploited temporary visa holders and a migration system that is currently driven by the interests of business rather than the interests of the Australian people. We need to transform Australia's visa system ending the exploitation of temporary visa holders and prioritising permanent migration. Migrant workers suffer disproportionate levels of wage theft, discrimination, intimidation, unfair dismissal, and pressure to do unreasonable work.

The COVID-19 crisis has led to the closure of international borders and a momentary halt of most temporary skilled migration. Yet the Government seems intent, once borders allow, to return to the high levels of temporary migration of the past without first addressing some of the fundamental problems with the migration system. This includes addressing systemic exploitation of migrant workers and putting Australian workers first.

## The necessary skills assessments are simply not being performed

Not only will this agreement facilitate the exploitation of migrant workers when it comes to skilled workers, the necessary skills assessments are simply not being performed, putting workers lives at risk and creating the potential for harm to the Australian community.

As has been noted by our affiliates in the case of electrical trades, the experience of the electrical industry is that trade agreements are facilitating unlicensed, unqualified workers being granted visas and performing high risk electrical work contrary to Australian law. Often the worker is also being paid their originating country wages and not Australian wages under the visas which have been created to satisfy the movement of natural person's chapters of trade agreements.

## The agreement should not prevent the re-regulation of essential Services

In general, the trade in services chapter treats government regulation of services as if it were a tariff, to be frozen at current levels of regulation and not to be increased in future, known as the standstill and ratchet structure. These rules apply to government regulation of services at national, state and local levels, unless they are specifically listed as reservations or nonconforming measures in Annex III. The chapter does not compel governments to privatise public services, but it opens services to international private investment unless they are specifically reserved.

Some provisions which could limit regulation of particular services are:

1) Public services are intended to be excluded from trade in services provisions. However the definition of public services (Article 8.1 (o)) is ambiguous in the context of competitive tendering and privatisation. It defines "a service supplied in the exercise of governmental authority "as "a service that is supplied neither on a commercial basis nor in competition with one or more service providers."

2) There is a specific list of services defined in Annex III as social services established or maintained for a public purpose for which governments reserve the right to increase regulation and make new regulations. They are:

    - law enforcement and correctional services
    - income security or insurance
    - social security or insurance
    - social welfare
    - public education
    - public training
    - health
    - childcare
    - public utilities
    - public transport and
    - public housing (p.32)

    Note that the right to have any regulations for child care is reserved, but this right is not reserved for aged care.

    - Market access provisions (Article 10.5a), p.10-5) mean governments cannot regulate on numbers of service suppliers, numbers of operations and numbers employed in particular services or operations. This may limit planning for the distribution of services and staffing levels in services like aged care.

    - There are detailed obligations for governments on domestic regulation of services to ensure that regulations for licensing, qualifications and technical standards are objective, not more burdensome than necessary, are not barriers to entry (Article 8.15). This could impact on campaigns for improve service standards and staff qualifications in services like aged care.

- The regulation of staffing and skill mix and other matters relating to the provision of aged care is essential to ensure older Australians can, and do, receive the high quality and safe care they require. It would be extremely concerning if there were any restrictions arising from the RCEP that pose a barrier to these urgently required reforms.

- Service providers do not have to be located in Australia, unless the service they provide is reserved in Annex III. Combined with the rise of digital platforms and cross-border data storage, (Chapter 12), this creates many possibilities for services companies to evade tax and other forms of regulation.

- Existing state and local government laws and policies which do not conform to the rules of the agreement are in Annex III List A (p.6). But these regulations are frozen at current levels. For example, if a service is opened to competitive tendering by private investors, this cannot be reversed or regulation increased in future, if privatisation fails, as happened with vocational education services in Australia. New non-confirming measures cannot be introduced. This is known as the standstill and ratchet structure, which is designed to freeze regulation at existing levels and lock in deregulation. This reduces the flexibility of governments need to respond to events like the COVID19 pandemic and climate change.

- Appendix A (p.51) of Australia's commitments in Annex III apply Australia's existing commitments under the WTO General Agreement on Trade in Services to state government regulation for the first time. In general, the GATS commitments apply to private commercial services regulation at state level, most of which are not controversial.

They are listed under the broad headings of professional services, research and development services, real estate services, other business services, communication services, construction and related engineering services, distribution services, environmental services, private health related social services, tourism and travel related services, recreational services and transport services.

But some of them are essential services which may require increased or new regulation in future at the state government level, for example environmental services.

Environmental services commitments still contain the previous GATS reservation of water for human use, specifying that Australia's commitments on environmental services reserve the right

to regulate water for human use, including water collection, purification and distribution (p. 56, footnote 53). Note that sewerage services are not exempted.

However there are other environmental services regulated at state level, for example, reduction of carbon pollution, which may require increased regulation in future

## Investor-State Dispute Settlement Provisions

The ACTU believes that trade agreements should retain or enhance the autonomy of the Australian Government to design and implement policies in the public interest across a range of areas that many trade agreements now encroach on. These include: the regulation of financial institutions and international financial transactions, climate change, government procurement, import regulation, quarantine and inspection regulations, biodiversity, food quality and security, media content and cultural industries, public ownership, public services, foreign ownership, research and development, transportation services, indigenous organisations and enterprises, the provision and regulation of essential services such as health, education, water, electricity, telecommunications and postal services, and the movement and employment of temporary migrant workers.

We therefore do not support trade agreements that lock member countries into investor-state dispute settlement (ISDS) provisions. ISDS provisions are not included in the RCEP at this stage however they could be reinserted two years after ratification if parties agree. These provisions would mean that when Australian governments make new laws or policy in the interests of Australian people, foreign investors can sue our government in international tribunals if they consider those laws harm their investment or disadvantage them in some way.

These are the type of provisions that allowed Veolia to sue the Egyptian Government for increasing its minimum wage, and Phillip Morris sue over Australia's plain cigarette packaging laws (under the terms of an old FTA with Hong Kong), among a host of other examples. As of 1 January 2020, the total number of known ISDS cases pursuant to international investment agreements (IIAs) had reached 1,023[3]. To date, 120 countries and one economic grouping are known to have been respondents to one or more ISDS claims[4].

[3] Investor–state dispute settlement cases pass the 1,000 mark: cases and outcomes in 2019' UNCTAD, July 2020 https://unctad.org/system/files/official-document/diaepcbinf2020d6.pdf

[4] Ibid

There is mounting evidence and alarm from many experts, including Australia's former High Court Chief Justice French[5], that ISDS tribunals lack the basic principles of fairness and consistency found in domestic legal systems. There is no independent judiciary, and no appeal mechanisms or system of precedent. 'Judges' can preside over one case while acting as a paid advocate in another, even if claimants and clients overlap between the two cases – a clear conflict of interest. In Australia, as in most national legal systems, judges cannot continue to be practising lawyers because of the obvious conflict of interest.

The fact ISDS provisions are restricted to foreign investors means these clauses also discriminate against local businesses which can only access our domestic court system for any claims for compensation. This could then have an impact on relative access to finance and certainly violates basic principles of national treatment and competitive neutrality.

The ACTU has a consistent position that ISDS clauses are a restriction on national sovereignty and the ability of governments to regulate to regulate in the public interest and impose an unnecessary cost burden on Australian taxpayers. They should not be included in any trade agreement that Australia enters into, including in this case, the RCEP.

## No labour chapter: Increasing the chance of a race to the bottom on labour standards

The Australian Government should be using trade agreements to improve working conditions and address issues of labour exploitation, including forced labour and child labour. RCEP contains no protections for workers' rights or human rights: there is no reference to international labour standards or human rights standards, and no labour chapter. The lack of safeguards for workers' rights is particularly concerning given the RCEP agreement contains several countries with poor labour rights records.

Over half of the 15 countries party to the RCEP agreement are ranked as among the worst countries in the world to work, where workers effectively have no access to rights, according to the International Trade Union Confederation's (ITUC) 2020 Global Rights Index.

[5] French, R.F Chief Justice (2014), "Investor-State Dispute Settlement-a cut above the courts?" Paper delivered at the Supreme and Federal Courts Judges conference, July 9, 2014, Darwin http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj09jul14.pdf

According to the Global Rights Index, the worst RCEP countries for workers – Brunei Darussalam, Cambodia, China, Indonesia, Korea, Laos, the Philippines, and Thailand – have poor labour rights records, including the use of child labour and forced labour; arbitrary arrests, detention and imprisonment of trade union leaders and worker activists; and limitations on freedom of association and collective bargaining.

Australian companies doing the right thing risk being undercut on labour costs by companies that use forced or child labour and repress union organising activity.

We look at some examples of labour rights abuses in RCEP countries below.

## Forced labour and human trafficking: China

In China, there are well-publicised, credible reports of forced labour and human trafficking. As many as 1.8 million Uyghurs, ethnic Kazakhs, Kyrgyz, and other Muslim minorities are, or have been, arbitrarily detained in the Xinjiang Uyghur Autonomous Region (XUAR)[6] - the largest internment of an ethnic and religious minority since World War II.[7] A central element of the Chinese Government's strategy to dominate the Uyghur people is a vast system of forced labour, both inside and beyond the internment camps.[8] The reports of human rights abuse in the internment camps are shocking, and include allegations of torture and sexual violence.[9] There is evidence China is expanding its network of detention facilities, despite official claims that all detainees have been released.[10] There is also evidence the Chinese Government is transporting Uyghurs and other Turkic and Muslim-minority peoples to other parts of China, where they are working in factories under conditions that strongly indicate forced labour.[11] The Australian Strategic Policy Institute (ASPI) report 'Uyghurs for sale: "re-education", forced labour and surveillance beyond Xinjiang', released in 2020, detailed allegations of Uyghur forced labour in 27 factories part of the supply chains of 82 global brands.[12] There is a high risk that brands and retailers in the garment and apparel sector in particular are benefiting from forced Uyghur labour – more than 80% of China's cotton is grown in the XUAR, approaching almost 20% of global production.

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[6] https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/CECC%20Staff%20Report%20March%202020%20-%20Global%20Supply%20Chains%2C%20Forced%20Labor%2C%20and%20the%20Xinjiang%20Uyghur%20Autonomous%20Region.pdf p. 4.

[7] https://www.ituc-csi.org/apparel-brands-Uyghur-forced-labour

[8] https://www.ituc-csi.org/apparel-brands-Uyghur-forced-labour

[9] https://www.abc.net.au/news/2021-02-03/uyghur-renew-calls-for-action-report-rape-abuse-xinjiang-camp/13118190

[10] https://www.abc.net.au/news/2020-09-24/china-building-bigger-uyghur-detention-camps-in-xinjiang/12693338

[11] https://enduyghurforcedlabour.org/call-to-action/

[12] https://www.aspi.org.au/report/uyghurs-sale

In 2019 there were allegations of forced labour of Uyghur peoples in Western China contributing to production chains for exports of clothing to Australia[13]. The media investigations claimed following brands sold in Australia source cotton from Xinjiang: Target, Cotton On, Jeanswest, Dangerfield, Ikea and H&M[14]. With Cotton On and Target Australia were reported to be investigating their relationships with suppliers in Xinjiang[15].

## Child labour: Indonesia and Cambodia

The US Department of Labour's report '2019 Findings on the Worst Forms of Child Labour' notes that children in Indonesia are engaged in the worst forms of child labour, including commercial sexual exploitation, sometimes as a result of human trafficking. Children also perform dangerous tasks in plantation agriculture, including in palm oil and tobacco production.[16] Child labour is used to produce fish, palm oil, footwear, gold, rubber, tin, and tobacco.[17] The report also notes that child labour is prevalent in Cambodia, where the Government has failed to take active measures to investigate, prosecute, convict and sentence public officials who participate in or facilitate the worst forms of child labour, including commercial sexual exploitation and debt-based forced labour in brick kilns.[18] Child labour is used in the production of alcoholic beverages, bovines, fish, manioc/cassava, meat, rubber, salt, shrimp, sugarcane, textiles, timber, and tobacco in Cambodia.[19]

## ILO Conventions must be included in trade agreements

The Australian Government should ensure that trade agreements include commitments by all parties to implement agreed international standards on labour rights, including the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work and the associated Conventions.

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[13] McNeil S, *et al* (2019) 'Cotton On and Target investigate suppliers after forced labour of Uyghurs exposed in China's Xinjiang'. *ABC News* (Sydney) 17 July, https://www.abc.net.au/news/2019-07-15/uyghur-forced-labour-xinjiang-china/11298750

[14] ibid

15 Ibid

[16] https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2019_TDA_Report_Online_Final.pdf, p. 637.

[17] https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2020_TVPRA_List_Online_Final.pdf , p. 22.

[18] *Ibid.,* p. 297.

[19] https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2020_TVPRA_List_Online_Final.pdf p. 20.

These include:

- the right of workers to freedom of association and the effective right to collective bargaining (ILO conventions 87 and 98).
- the elimination of all forms of forced or compulsory labour (ILO conventions 29 and 105).
- the effective abolition of child labour (ILO conventions 138 and 182).
- the elimination of discrimination in respect of employment and occupation (ILO conventions 100 and 111).

The Korea-Australia Free Trade Agreement (KAFTA) included a Labour Chapter in which parties made commitments not to reduce labour rights, to implement the ILO fundamental rights, and their own labour laws, but these commitments were not legally enforceable through the state-to-state dispute process in the agreement[20]. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) also has a Labour Chapter, for which some aspects of labour rights are enforceable through a disputes process which is specific to that chapter. However the process is more protracted and less enforceable than the state-to-state dispute process that applies to other chapters in the agreement[21].

In contrast, there is no Labour Chapter at all in the RCEP. This means governments have endorsed preferential trade arrangements without any commitments not to reduce labour rights, nor to implement the fundamental ILO rights.

## Myanmar military coup

The Australian Government should not be signing a preferential trade deal with Myanmar while the military junta is in power. The military coup on 1 February 2021 suspended civilian government and effectively returned full power to the military, and the situation is getting worse by the day. The military is escalating its repression of the mass Civil Disobedience Movement (CDM). Workers and trade unions are at the forefront of the CDM, and are being violently suppressed by the military

[20] Korea Australia Free Trade Agreement (KAFTA) (2014) *Text*, Chapter 17 found at http://dfat.gov.au/trade/agreements/kafta/official-documents/Pages/default.aspx

[21] Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2018) Text of the Trans-Pacific Partnership Agreement (incorporated into the Comprehensive Progressive Trans-Pacific Partnership Agreement). Canberra: Department of Foreign Affairs and Trade 4 February, Chapter 19 https://www.dfat.gov.au/trade/agreements/not-yet-in-force/tpp/Pages/tpp-text-and-associated-documents.

junta for participating in peaceful protests and strikes. Trade unionists have been arrested, intimidated, threatened and charged for participating in protests and strike actions; union leaders are on a military wanted list and are now in hiding; sixteen unions and workers' rights organisations have been declared illegal by the military regime; and workers have been terminated or had wages withheld for participating in strikes and protests, and many are now struggling to feed their families. The International Labour Organisation has expressed grave concern about the military regime's suppression of workers' rights and has urged military authorities to respect the will of the people, democratic norms and restore the democratically elected Government.

Instead of entering into a preferential trade deal with Myanmar, the Australian Government should be implementing trade sanctions and cutting off all support to the military junta. If the Australian Government signs an RCEP that includes Myanmar, it risks legitimising the regime. Instead, the Morrison Government needs to follow the lead of the Biden administration, who announced on 29 March the immediate suspension of all US engagement with Myanmar under the 2013 Trade and Investment Framework Agreement (TIFA)[22]. The suspension will remain in effect until the return of a democratically elected government in Myanmar. In addition, the Office of the US Trade Representative will consider the situation in Myanmar with respect to internationally recognised worker rights eligibility criterion as Congress considers reauthorisation of the Generalised System of Preferences (GSP) program. The Office of the US Trade Representative rightly notes that "reports that the military has targeted Burma's trade unions and workers for their role in the pro-democracy protests raise serious concerns about workers rights protections."[23]

The United States GSP program is designed to promote economic growth in developing countries by providing preferential duty-free treatment for approximately 3500 products from a wide range of designated beneficiary developing countries, including many least-developed beneficiary countries. The GSP program first came into effect in 1976, and authorisation of the program expired on 31 December 2020[24]. In recognition that growth should not be driven by worker exploitation and to avoid creating an unfair advantage for countries that suppress wages by suppressing union organising, GSP criteria requires that beneficiary countries "have taken or are taking steps to grant internationally recognised worker rights (including collective bargaining, freedom from compulsory labour, minimum age for employment of children, and acceptable

[22] https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/march/ustr-suspends-trade-engagement-burma-following-military-coup-and-violence-against-civilians
[23] https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/march/ustr-suspends-trade-engagement-burma-following-military-coup-and-violence-against-civilians
[24] https://ustr.gov/sites/default/files/gsp/GSPGuidebook_0.pdf ,p. 4.

working conditions with respect to minimum wages, hours of work, and occupational safety and health); and implement their commitments to eliminate the worst forms of child labour."[25] In 2016, President Obama announced that Myanmar was eligible for GSP, which ended a 27-year suspension of Myanmar's GSP benefits due to worker rights violations following the violent suppression of pro-democracy demonstrations and strikes in 1988[26]. The review of Myanmar's GSP eligibility was part of a comprehensive review of the bilateral relationship following Myanmar's return to democratic governance.[27]

The Australian Government should use its trade policy to create incentives to ensure trading partners protect and respect human rights, including workers' rights. The Australian Government could have used RCEP as an opportunity to support job creation and economic growth in partner countries, while at the same time raising standards and protecting workers' rights. Instead, with no protections for workers' rights and no incentives for partner countries to improve their workers' rights records, RCEP will further contribute to the race-to-the-bottom on workers rights in Asia Pacific. Moreover, there is the very real risk RCEP will legitimise and further entrench the illegal military junta in Myanmar – when the Australian Government should instead be taking strong action to support a return to democratic norms and restore the democratically elected Government in Myanmar.

## There is no empirical evidence of any significant economic benefits

All trade deals result in both winners and losers, because they reduce tariffs and other trade barriers, which can benefit consumers and industries dependent on imports, but intensify competition and result in job losses in some industries. The devil is in the detail, and both costs and benefits need to be evaluated.

India left the RCEP because of concerns about the RCEP's potentially negative impact on its local industry development[28]. Since Australia already has free trade agreements with all of the other RCEP member countries, India's absence means there are no additional export markets for Australian goods. The Department of Foreign Affairs and Trade (DFAT) Regulation Impact Statement (RIS) acknowledges this:

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[25] https://fas.org/sgp/crs/misc/RL33663.pdf , p. 11.

[26] https://fas.org/sgp/crs/misc/RL33663.pdf , p. 13.

[27] Ibid.

[28] Panda, R. (2019) "A step too far: Why India opted out of the RCEP", Global Asia, Volume 14, No. 4, December.

> *Given the relative quality of Australia's existing FTAs with RCEP parties, including the CPTPP, we do not expect RCEP goods market access commitments to provide Australia with additional market access with our current FTA partners*[29]

The RIS also acknowledges that the RCEP does not offer Australian consumers any additional benefits in the form of reduced tariffs on imports from RCEP countries.

> *Under our existing FTAs, Australia will already have eliminated tariffs on imports from all RCEP parties by 1 April 2021*[30]

The National Interest Analysis confirms this by stating:

> *There are no costs in losses of tariff revenue for Australia associated with the entry into force of the RCEP as – under existing FTAs – Australia will have already eliminated tariffs on imports from all RCEP parties by 1 April 2021*[31]

The DFAT NIA claims that Australia will benefit from common rules of origin and customs procedures, from some increased market access for services exports in China and ASEAN countries, from increased Australian investment in RCEP countries, and from RCEP countries' businesses investing Australia[32].

However, neither the NIA nor the RIS make any reference to the deterioration in Australia's relationship with China, which is Australia's largest trading partner among the RCEP countries.

Since the RCEP negotiations were finalised in November 2019, China has placed restrictions on Australian meat exports alleging lack of conformity to labelling and health standards,[33] has delayed

[29] Department of Foreign Affairs and Trade (2021a) National Interest Analysis, Canberra https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/RCEP/Treaty_being_considered

[30] Department of Foreign Affairs and Trade (2021b) Regulation Impact Statement, Canberra https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/RCEP/Treaty_being_considered.

[31] Department of Foreign Affairs and Trade (2021a) National Interest Analysis, Canberra https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/RCEP/Treaty_being_considered

[32] Ibid

[33] ABC/Reuters (2020) China suspends importation of more Australian beef as trade battle escalates, *ABC News* December 8, https://www.abc.net.au/news/2020-12-08/china-suspends-australian-beef-imports-latest-trade-hit/12958950

unloading of Australian coal exports,[34] and has initiated anti-dumping procedures and tariffs on Australian barley and wine[35].

China claims that the barley and wine restrictions are based on WTO anti-dumping rules and the beef restrictions on WTO-consistent labelling requirements. The existence of the China-Australia Free Trade Agreement (ChAFTA) has not prevented these restrictions, and the RCEP in itself will not affect them, since both are based on WTO rules. Australia is pursuing remedies under WTO rules. However the restrictions will reduce Australia's exports to China, if they persist after the agreement comes not force, and should be taken into account in any assessment of the costs and benefits of the RCEP.

Since the government has not commissioned an independent study of the economic or social costs and benefits of the RCEP in Australia, we have no actual assessment of the claimed benefits listed by DFAT above, nor of the impact of China's restrictions on Australia's imports.

There is a lack of economic modelling and analysis concerning the impacts of these agreements on Australia's economy. The government has clearly not conducted a full independent empirical assessment of the economic impacts. Unions are concerned that the appropriate cost benefit analysis and impacts are just not being done.

DFAT is essentially 'marking their own homework' – this is not acceptable.

We have seen in other trade agreements the economic costs outweigh the benefits with significant effects on labour including job losses in certain sectors. It is important to carry out this analysis.

## Charting a new course for Transparent and inclusive trade agreements

The RCEP is a major undertaking with profound implications for both the Australian and the global economy and society. It deals with a wide range of matters that are traditionally the preserve of

[34] Hurst, D. and Butler, B., (2021). Australia renews concerns over coal ships stuck off China amid import quota uncertainty, The Guardian, March 14,. https://www.theguardian.com/australia-news/2021/mar/14/australia-renews-concerns-over-coal-ships-stuck-off-china-amid-import-quota-uncertainty.

[35] Ministry of Commerce, People's Republic of China, 2018.

national governments to determine through their own domestic, democratic parliamentary processes.

Yet the process to get to this point with a signed agreement being presented to the Australian Parliament for ratification leaves a lot to be desired. As appears to be the way with all trade agreements Australia is involved in, the RCEP has been negotiated and finalised largely in secret and signed with very little, if any, public and parliamentary scrutiny up to this point.

The secrecy of the detail of these negotiations has meant that the occasional unauthorised leaking of text documents has been the only way stakeholders have gained access to documents that should have been the subject of open debate in the parliament and in the community throughout negotiations.

Only now, after the RCEP agreement has been signed, does this Inquiry provide an opportunity for Parliament to properly scrutinise an agreement that has been years in the making.

If the experience of past trade agreements is any guide, the scope from here on for meaningful changes to be made to deficiencies with this agreement is limited. In the end, Parliament only votes on the implementing legislation, not the whole text. Essentially, it becomes an all or nothing proposition at that point in terms of ratification of the agreement.

The negotiating process for an agreement that Australia has already signed up to cannot be undone. What is done in that sense is done. However, the fact the RCEP has been put together without a proper transparent and inclusive process for public input into negotiations should give this Inquiry and Parliament even greater cause to ensure the agreement is now subject to comprehensive scrutiny.

To this end, we call for an independent, external inquiry into the costs and benefits of the RCEP. This inquiry should also take a lead role in advocating for reforms to the treaty-making process and future trade agreement negotiations to set a new standard both for the conduct of negotiations and for the process by which Australia enters into such agreements. The existing, flawed and inadequate process that we have seen with the RCEP and other agreements does not have to be set in stone forever more.

The need for a more open and democratic process for trade agreements is more important than ever now because they are no longer simply tariff deals; increasingly they deal with an expanding range of other regulatory issues which would normally be debated and legislated through the democratic parliamentary process, and which have deep impacts on workers' lives.

In summary, we submit the following recommendations should be made for all future trade agreement processes:

- Prior to commencing negotiations for bilateral or regional trade agreements, the Government should table in Parliament a document setting out its priorities and objectives. The document should include independent assessments of the projected costs and benefits of the agreement. Such assessments should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise.

- There should be regular public consultation during negotiations, including submissions and meetings with stakeholders. The Australian government should follow the example of the European Union and release proposals and discussion papers during trade negotiations.

- The Australian Government should follow the example of the European Union and release the final text of agreements for public and parliamentary debate, and parliamentary approval before they are authorised for signing by Cabinet.

- After the text is completed but before it is signed, comprehensive, independent assessments of the likely economic, social and environmental impacts of the agreement should be undertaken and made public for debate and consultation and review by parliamentary committees.

- An inquiry should review the text of a trade agreement which has been released before signing with the independent assessment of its costs and benefits, and make a recommendation to Parliament.

- Legal experts agree that the Executive power to enter into treaties is a prerogative power which can be abrogated or controlled by legislation. There is no constitutional barrier to Parliament playing a greater role in the treaty decision-making process. After release of the text and before signing, and after a review of the text and the independent assessment of the costs and benefits of the agreement, Parliament should decide whether the Cabinet should approve the agreement for signing.

- If the agreement is approved by Parliament, and approved for signing by Cabinet, Parliament should then vote on the implementing legislation

# Conclusion

The ACTU believes that trade agreements should have a rock-solid commitment to ensuring that provisions of trade agreements do not jeopardise Australian jobs, undermine working conditions or compromise the ability of current and future Australian governments to exercise their sovereign rights to regulate in the public interest. Alarmingly, as the right to regulate the aged care sector is not expressly reserved in RCEP, ratification could mean that the Australian Government loses the ability to regulate aspects of the aged care sector.

Furthermore, there has been no independent Australian economic modelling of the specific costs and benefits of the RCEP on the Australian economy. Nor have there been any independent studies of the health, environmental and gender impacts of the RCEP in Australia.

There are also no commitments at all to implement internationally agreed labour rights despite many RCEP's countries poor record in this area and the Australian Government should not be signing a preferential trade deal with Myanmar while the military junta is in power. The RCEP sends a regrettable message. That we are not committed. That Australia does not take these issues seriously.

As a consequence, the ACTU recommends that the enabling legislation for the RCEP not be passed.

# Recommendations

*Recommendation 1*

- That the government commission and publish an independent evaluation of the economic, social and environmental costs of the RCEP.

*Recommendation 2*

- This agreement should not entrench the removal of labour market testing for all RCEP countries which includes a third of the world's population
- The agreement should not include provisions that facilitate increased number of temporary workers who are vulnerable to exploitation.
- Ensure the necessary skills assessments are being performed, so not to put workers lives at risk and create potential for harm to the Australian community

*Recommendation 3*

- The Australian Government should not be signing a preferential trade deal with Myanmar while the military junta is in power.

*Recommendation 4*

- That the RCEP be re-negotiated to include enforceable commitments to labour rights based on ILO conventions enforced through the state-to-state dispute process which applies to other chapters in the agreement.

*Recommendation 5*

- That the RCEP rules on national treatment and market access be reviewed to ensure that they do not prevent the implementation of bipartisan proposals for active government industry policies needed to ensure local industry capability and to rebuild the economy in the wake of the pandemic.

*Recommendation 6:*

- That the Australian government seek an amendment to the Services Chapter 8 Annex III list B, page 32 to list aged care in reservations excluded from obligations in the Services Chapter.

*Recommendation 7*

- That the Australian government review services chapters in existing bilateral and regional trade agreements like the Singapore Australia Free Trade Agreement, the CPTPP and other agreements to ensure that aged care is listed as a reservation excluded from obligations in the services chapter.

*Recommendation 8*

- That the Australian government ensure that aged care is reserved from obligations in the services chapter in current negotiations with the EU and the UK, and in any other future trade agreements.

*Recommendation 9*

- Given the lack of independent assessment of economic and social costs and benefits, the lack of any enforceable commitments to internationally recognised human rights, labour rights or environmental standards, restrictions on local industry development and restrictions on regulation of aged care, the parliament should not proceed with enabling legislation. The government should instead seek re-negotiation of these issues as outlined in our recommendations.

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